

DATE: January 8, 1986
TO: Charles G. Abdelnour, City Clerk
FROM: City Attorney
SUBJECT: Use of Precinct Numbers on Recall Petition

Arising out of the recall effort against Councilman Martinez, you recently pointed out San Diego Municipal Code section 27.2714 which requires precinct numbers to be noted on the recall petition form. You note, however, that past petitions have been accepted without the numbers and that the Registrar of Voters does not use them in verifying signatures. In light of this, you ask whether a petition without such numbers is valid. Although the matter is moot as to the Martinez recall, we believe your question should be answered for guidance in future situations.

Until 1974 the California State Constitution required that election precinct numbers appear on a recall petition after the voters name. California Constitution, Article XXIII, section 1. The constitutional recall provisions are now found in California Constitution, Article II, sections 13-19, which delete any such requirement.

We note that Municipal Code section 27.2714, to which you refer, was enacted on July 9, 1968, and at that time precinct numbers were a constitutional requirement. Interestingly enough, this requirement has on at least two occasions voided petitions. In *Mayock v. Kerr*, 216 Cal. 171 (1932), a petitioner sought to compel the Registrar of Voters to accept an initiative petition without precinct numbers. In rejecting such relief, the California Supreme Court found the requirement mandatory holding:

Thus the Constitution itself provides that the precinct numbers must appear on the petition, and this must necessarily mean that such precinct numbers must appear on the petition at the time the petition is presented to the Registrar of Voters. Inasmuch as the Constitution plainly requires this information

to appear on the petition it is needless to speculate as to why the framers of the Constitution saw fit to insert this limitation on the exercise of the right. The provision was probably inserted as a mechanical aid to the Registrar of Voters in investigating, identifying and verifying the persons and

signatures of the purported signers.

Mayock, *supra* at 173.

Similarly a recall petition against then Governor Ronald Reagan failed to contain required precinct numbers and met the same rejection. *Lee v. Superior Court*, 265 Cal.App.2d 49 (1968).

As pointed out, precinct numbers are no longer constitutionally required and state legislation specifically excludes precinct numbers as a requirement.

SEC. 81011.5. Written information on petition
by signer of statewide
petition; precinct not required

Any provision of law to the contrary notwithstanding, the election precinct of a person signing a statewide petition shall not be required to appear on the petition when it is filed with the county clerk, nor any additional information regarding a signer other than the information required to be written by the signer.

California Government Code, section
81011.5

While all of the above details the deletion of the requirement from statewide petitions, recall of officers of a charter city has been repeatedly held a municipal affair and thus subject to local restrictions. *Bricker v. Banks*, 98 Cal.App. 87 (1929); *Muehleisen v. Forward*, 4 Cal.2d 17 (1935). But the local restrictions appear to be internally inconsistent. Thus an initiative petition does not require a precinct number (Section 27.2509), while referendary petitions (Section 27.2607) and recall petitions (Section 27.2711; 27.2714) do require precinct numbers.

Added to this inconsistency is your comment that prior petitions have been accepted and acted upon without the required

precinct information. The Supreme Court required the Secretary of State to accept a referendum petition with improper addresses based, in part, on prior acquiescence. The court held:

Under the unusual and unique circumstances of this case, real parties' failure to comply with the requirements of section 3516, subdivision (c) will not be deemed to render the referendum petitions invalid. The Secretary of State should proceed to perform her duties, including those set forth in section 3520. All other petitions which

either have qualified for the ballot or are in the circulation process as of the date this decision becomes final shall be treated similarly.

Assembly v. Deukmejian, 30 Cal.3d 638, 652 (1982).

With the high court excusing compliance on an item that clearly bears on the verification issue, we believe that the failure to enforce a precinct number requirement which you candidly admit does not bear on verification would similarly be excused based on past acquiescence.

(2) This court has stressed that technical deficiencies in referendum and initiative petitions will not invalidate the petitions if they are in "substantial compliance" with statutory and constitutional requirements. (California Teachers Assn. v. Collins (1934) 1 Cal.2d 202, 204 (34 P.2d 134).) A paramount concern in determining whether a petition is valid despite an alleged defect is whether the purpose of the technical requirement is frustrated by the defective form of the petition. "The requirements of both the Constitution and the statute are intended to and do give information to electors who are asked to sign the . . . petitions. If that be accomplished in any given case, little more can be asked then that a substantial compliance with the law and the Constitution be had, and that such compliance does no violence to a reasonable construction of the technical requirement of the law." (Ibid.)

Assembly v. Deukmejian, supra at 652-653.

To avoid such problems from arising in the future, we recommend that your staff examine the provisions of the initiative, referendum and recall petitions. If precinct numbers do not facilitate verification, please process the necessary request for an ordinance deleting them in accordance with San Diego Municipal Code section 22.0101, Rule 27 and this office will draft the appropriate language.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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